



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 17-003

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

The statute that authorizes this grant program provides that “the department may award ... grants to veterans, employers, and non-profit organizations ...”. [s. 45.437 (1), Stat.] The rule provides grants for employers and non-profit organizations, but does not provide a process for a veteran to directly apply for a grant. The department may wish to comment on its decision not to pursue direct grants to veterans under the proposed rule.

2. Form, Style and Placement in Administrative Code

a. The introductory clause should reflect that this is an order to create s. VA 2.08. It is unnecessary to specify all of the subunits of the newly created s. VA 2.08.

b. Throughout the proposed rule, the department should review the format of rule subunits, titles, and internal references, as described in ss. 1.03 (1), 1.05 (2), and 1.07 (2) of the Manual. Subdivisions beyond the subdivision paragraph level should be avoided in proposed s. VA 2.08 (5) (b) 3.

c. Throughout the proposed rule, use of “and/or” should be avoided. [s. 1.01 (9) (a), Manual.]

d. The definitions section of the proposed rule provides definitions for “grant participant” and “veteran”, but both are defined in exactly the same way: as “a person who meets the requirements of s. 45.01 (12), Stats.”. Section 45.01 (12), Stats., defines “veteran” for the purposes of ch. 45, Stats. Why are two separate terms defined to express an identical concept? Further, are

the terms “grant participant”, as defined, and “applicant” or “grantee” used properly throughout the proposed rule? See, for example, s. VA 2.08 (5) (k), where it is unclear whether the department intends for “veteran” to substitute for “grant participant”.

e. Proposed s. VA 2.08 (4) (c) prohibits the department from paying a grant to an applicant in any calendar year in which the veteran voluntarily or involuntarily leaves his or her employment with the applicant”, but proposed s. VA 2.08 (4) (a) 1. and 2. provides that certain payments may be made following the first six months of employment. Are there possible conflicts between these provisions?

f. The proposed rules for veterans entrepreneurship grants contain a number of restrictions and, among other provisions, specify that grant awards depend on the availability of funds under s. 20.485 (2), Stats. The only restriction on the veterans employment grants appears to be that the department may not pay a grant in any calendar year in which the veteran leaves his or her employment with the applicant. Is it the department’s intent that none of the restrictions that apply to the veterans entrepreneurship grant apply to the veterans employment grants? Additionally, because the proposed rule does not contain language conditioning veterans employment grants on availability of funds, is it necessary to specify how grants will be awarded in the event the department receives eligible applications for amounts that exceed available funds?

g. In proposed s. VA 2.08 (5) (c) 1. to 9., use of excessive capitalization should be removed. A period should be placed at the end of s. VA 2.08 (5) (c) 6.

h. Proposed s. VA 2.08 (5) (e) provides that the department shall award “a grant to the applicants with the highest numerical score ...”, but although the rule references criteria the evaluation committee shall consider, the rule appears to provide no information about a numerical scoring system. (Also, note that if the department retains the sentence quoted above in the rule, it should revise the sentence to correct for the inconsistent use of the plural and singular.)

i. Proposed s. VA 2.08 (5) (e) provides that if a grantee uses grant funds for prohibited activities, the department “may terminate the grant and recover funds ...”. Use of the word “may” indicates the department has discretion over whether to terminate a grant and recover the funds if the grant is used for prohibited activities. Is this the department’s intent?

j. Proposed s. VA 2.08 (5) (j) appears to be a tautology. That provision provides that “the amount of a grant award shall be based on the amount requested by the applicant and the amount approved by the evaluation committee”. Unless an entity other than the evaluation committee is determining the grant amount, it would seem that “the amount approved by the evaluation committee” would be the amount of the grant. It also seems axiomatic that the committee’s decision would be based by the amount requested. If, however, another entity determines the amount of the grant, this provision does not provide meaningful information about how grant amounts are ultimately determined or how much a grant applicant might expect to receive. Also in proposed s. VA 2.08 (5) (j), the abbreviation for paragraph should be singular: “Subject to par. (h)”.

k. In proposed s. VA 2.08 (5), there is no paragraph (f) between paragraphs (e) and (g).

l. The effective date provision of the rule should be indicated as “SECTION 2” of the proposed rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Under the explanation of agency authority, the reference to “Act 385” should clarify that the relevant act is “2015 Act 385”.

b. The plain language analysis does not contain sufficient detail to enable the reader to understand the content of the rule. [s. 1.02 (2) (b), Manual.] The information the department included in this section instead generally restates the directive, under s. 45.437 (4), Stats., for the department to promulgate rules implementing the grant program.

c. In the “authority and purpose” paragraph of the proposed rule text, the department should include the word “and” before the final item in the list of what the grants are for.

d. The word “account” in proposed s. VA 2.08 (4) (a) of the proposed rule is unnecessary.

e. Proposed s. VA 2.08 (4) (a) 1. and 2. is confusing. These subdivision paragraphs seem intended to provide the grant amounts available to employers for hiring a veteran for a full-time position or part-time position, respectively. Section VA 2.08 (4) (title) and (a) (intro.) refer to hiring of veterans but subdivision paragraphs 1. and 2. refer only to disabled veterans. The proposed rule should be rewritten and perhaps reorganized to clearly express whether employment grants are available to employers of disabled veterans or employers of both veterans and disabled veterans.

f. The method the proposed rule provides for calculating the grant amount for hiring a part-time employee is unclear and raises a number of questions. First, proposed s. VA 2.08 (4) (a) 2. refers to each disabled veteran the employer hires “in a twelve month period” and provides for payment amounts after six month periods. However, the formula in proposed s. VA 2.08 (4) (d) requires the department to calculate the payment for these periods based on the number of hours the employee worked in the calendar year. It is not unlikely the difference between the hours an employee worked in a 12 month or six month period will be different than the hours the employee worked in a calendar year, and it is unclear why amounts determined based on six month intervals are calculated using the number of hours worked in a calendar year. If the department’s intent is that grants for hiring part-time employees be proportional to the grants for hiring a full-time employee, the department should revise carefully to ensure the formula accomplishes this. If the intent is not that the grants be proportional, the department might consider explaining the rationale behind the grant amounts in the plain language analysis. In proposed s. VA 2.08 (4) (d), what does “as appropriate” mean?

g. Proposed s. VA 2.08 (5) (a) 3. refers to “the duration of the grant period”. The rule does not appear to provide any guidance about what the grant period is. Relatedly, this subdivision paragraph requires a nonprofit organization to be “financially viable” to be eligible to receive a grant, and defines “financially viable” as being able to “meet its financial obligations for the duration of the grant period”. Proposed s. VA 2.08 (5) (b) 3., which lists application requirements for these types of grants, does not include proof of financial viability.

h. In proposed s. VA 2.08 (5) (a) 4., the word “current” is unnecessary.

i. In proposed s. VA 2.08 (5) (c), the word “the” should be inserted between “to” and “applicant’s”.

j. Throughout the proposed rule, the department might consider revising overly verbose provisions with more direct language. For example, in proposed s. VA 2.08 (5) (k) “services under this grant program” could be replaced with “a grant”, and “the following criteria must be met for all grant participants” could be replaced with “an applicant must”. Likewise, the first part of s. VA 2.08 (5) (i) could be written as follows: “No grant may be paid to any person ...”. [See also proposed s. VA 2.08 (e), among other provisions.]

k. In proposed s. VA 2.08 (5) (l), the department might consider replacing the word “effect” with “impact”.